

KANSAS COMMISSION ON PEACE OFFICERS' STANDARDS AND TRAINING
1999 N. AMIDON, SUITE 350
WICHITA, KANSAS 67203
316-832-9906

IN THE MATTER OF:)
)
)
RICHARD PACHECO,)
 Respondent.)

Case No. 2012-0164
Certification No. 20050

**CONSENT AGREEMENT
AND
ORDER OF REVOCATION**

Now on this 19th day of March, 2014, the above-referenced matter comes on for consideration by the Kansas Commission on Peace Officers' Standards and Training (CPOST). Under the Kansas Administrative Procedures Act, CPOST has delegated its authority to hear and decide the above-referenced matter to the following members of the CPOST Investigative Committee: Chairman Sheriff James Jarboe - Kearny County Sheriff's Office, Chief Michael Keller - Andover Police Department, and Lt. Mark Pierce - Sedgwick County Sheriff's Office. The Commission is represented by Eric N. Williams, Disciplinary Counsel, 1999 N. Amidon, Suite 350, Wichita, Kansas 67203. Richard Pacheco (Respondent) is present in person and is not represented by counsel.

1. Respondent fully understands and agrees to the following:

A. The Kansas Commission on Peace Officers' Standards and Training (CPOST) is the Kansas agency vested with the authority to carry out and enforce the provisions of the Kansas Law Enforcement Training Act (Act), K.S.A. 74-5601 *et seq.*, including conducting hearings and proceedings to suspend, condition, revoke, reprimand, censure or deny the certification of a police officer or law enforcement officer.

B. On October 17, 2002, CPOST certified Respondent as a Full-Time law enforcement officer in the State of Kansas by issuing certification number 20050. At all times relevant hereto, Respondent held a current certification as a law enforcement officer in the State of Kansas. CPOST has jurisdiction over Respondent and the subject matter of this action.

C. Respondent understands that, pursuant to K.S.A. 77-515, and amendments thereto, he has the right to be represented by an attorney at his expense during these proceedings. Respondent hereby waives his right to an attorney.

D. Respondent waives his right under the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.*, to an adjudicative hearing on a complaint filed in the above-referenced matter. Respondent understands that by waiving his hearing he gives up the following rights: the

right to confront and cross-examine all witnesses testifying against Respondent; the right to present evidence, the right to have CPOST issue subpoenas to bring all witnesses and evidence favorable to Respondent to a hearing, and the right to testify on his behalf.

E. Respondent agrees and understands that by waiving his right to a hearing, he also waives the right to have the hearing panel make specific findings of facts based upon clear and convincing evidence admitted at such hearing and state the conclusions of law on whether Respondent violated the Act or any regulation utilized in conjunction with the Act.

F. Respondent also waives his right to seek reconsideration by the hearing panel or to otherwise contest this Consent Agreement and Order of Revocation.

G. Respondent further waives his right to seek judicial review in accordance with the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*

H. CPOST has received certain information, has investigated, and has determined that there are reasonable grounds to believe that Respondent has committed an act or acts in violation of the Kansas Law Enforcement Training Act.

2. Respondent acknowledges and agrees that if this matter were to proceed to hearing, the following information or statements would be presented by clear and convincing evidence to the hearing panel.

- A. On November 13, 2011 Respondent was involved in a physical altercation with a Daniel E Orr at 4700 Parallel Pwky, Kansas City, KS that was investigated by the Kansas City Police Department under complaint number 2011111350.
- B. The Respondent acknowledges that the November 13, 2011 incident at 4700 Parallel Pwky was initiated by his tailing a truck he believed had side swiped his personal car.
- C. While trying to catch up to this suspect truck the Respondent contacted 911 and was able to provide them with a vehicle description and tag number. The Respondent was then advised by the 911 dispatcher that he should not continue to follow the other car.
- D. The Respondent continued to following the other vehicle until it pulled into a business parking lot.
- E. The Respondent then pulled into the same business parking lot where the physical confrontation between the Respondent and Daniel Orr ensued.
- F. Respondent engaged in brawling or fighting with knowledge that such acts would alarm, anger or disturb others or provoke an assault or other breach of the peace.

Respondent does not contest or dispute these facts.

3. Respondent acknowledges and agrees that if this matter were to proceed to a hearing, the facts stated in paragraph 2 above would constitute the following violations under the Kansas Law Enforcement Training Act and/or the regulations promulgated thereunder:

- A. Pursuant to K.S.A. 74-5616(b)(1) The commission may suspend, condition, revoke, reprimand, censure or deny the certification of a police or law enforcement officer who fails to meet and maintain the requirements of K.S.A. 74-5605 or 74-5607a, and amendments thereto.
- B. K.S.A. 74-5605(b)(5) states that each applicant for certification shall be of good moral character sufficient to warrant the public trust in the applicant as a police officer or law enforcement officer.
- C. K.A.R. 106-2-4 defines good moral character as upholding the laws of the state and nation and conduct that warrants the public trust.
- D. Pursuant to K.S.A. 74-5616(b)(5) The commission may suspend, condition, revoke, reprimand, censure or deny the certification of a police or law enforcement officer who engages in conduct which, if charged as a crime, would constitute a misdemeanor crime that the commission determines reflects on the honesty, trustworthiness, integrity or competence of the applicant as defined by rules and regulations of the commission.
- E. K.A.R. 106-2-2a(a)(50) defines the misdemeanor of disorderly conduct, as defined in K.S.A. 2011 Supp. 21-6203 and amendments thereto, as a misdemeanor crime that the commission determines reflects on the honesty, trustworthiness, integrity or competence of the applicant or officer whether or not charged as a crime or resulting in a conviction.

4. Respondent acknowledges and agrees that the facts enumerated in paragraph 2 above and the violations enumerated in paragraph 3 above constitute grounds for CPOST to revoke Respondent's certification as a law enforcement officer. Respondent hereby waives any further proof in this or any other proceeding before or initiated by CPOST.

5. In lieu of an adjudicatory hearing, Respondent hereby voluntarily surrenders his certification as a law enforcement officer in the State of Kansas, certification number 20050.

6. By accepting this agreement and surrendering his certification, Respondent agrees and acknowledges that CPOST will revoke his certification as a law enforcement officer and that the following disposition is just and appropriate under the above stated facts.

A. Respondent agrees not to seek or request reinstatement or certification in Kansas for a period of five years (5) years from the effective date of this Consent Agreement and Order of Revocation.

B. Respondent agrees that should he violate the terms of this agreement and apply for reinstatement or certification, CPOST will deny his request or application for reinstatement, licensure, or certification by a Summary Proceeding Order, and such denial shall be based solely on the terms of this agreement and shall be final and conclusive.

C. Respondent agrees that if Respondent should ever again apply for certification or reinstatement as a law enforcement officer in the State of Kansas pursuant to paragraph 6.A., Respondent shall have the burden to prove, by clear and convincing evidence, that he is rehabilitated and competent to be certified as a law enforcement officer in the State of Kansas.

D. Respondent further agrees that in considering whether Respondent has met his burden of proof for certification or reinstatement under paragraph 6.C., CPOST may pursuant to K.S.A. 74-5622(b) consider any relevant evidence, and may, but shall not be required, to consider the following factors:

- i. the present moral fitness of the Respondent for performance of duties as a police officer or law enforcement officer;
- ii. the demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought upon the law enforcement profession and the administration of justice;
- iii. the extent of Respondent's rehabilitation;
- iv. the nature and seriousness of Respondent's original misconduct;
- v. the conduct subsequent to discipline;
- vi. the time elapsed since the original discipline; and
- vii. Respondent's character, maturity, and experience at the time of the original revocation.

E. As part of any future application for reinstatement or certification, CPOST shall have the right to require Respondent to submit to any physical and/or mental tests or examinations with providers of CPOST's choice and totally at Respondent's expense. If CPOST elects to have such tests or evaluations performed, Respondent shall authorize the release of all information related to such tests or examinations to CPOST or its representative. Should CPOST determine to recertify Respondent, CPOST may place any conditions or limitations to act or serve as a certified police officer or law enforcement officer, as CPOST may in its discretion deem necessary.

7. The Respondent acknowledges that the approval of this Consent Agreement and Order of Revocation by CPOST's disciplinary counsel shall not constitute the approval of CPOST or bind CPOST to approve this Consent Agreement and Order of Revocation. Respondent

acknowledges and understands that the agreements and orders contained herein shall not become binding until this Consent Agreement and Order of Revocation is approved by CPOST.

8. Respondent agrees that all information in the possession of CPOST's Investigation Committee, its staff, its investigators, and its disciplinary counsel regarding the complaint leading to this disciplinary action; the investigation of the complaint; and all information discovered during the pendency of the disciplinary action may be disclosed to and considered by any CPOST Commissioner as part of the presentation and consideration of this Consent Agreement and Order of Revocation, with or without the presence of Respondent and/or his attorney.

9. In the event a hearing is necessary concerning the terms of this Consent Agreement and Order of Revocation, Respondent further waives any objection to the CPOST Commissioners who considered this Consent Agreement and Order of Revocation or the documents and information mentioned in paragraph 8 above from participating in such hearing. Respondent further agrees to waive any claim of due process violation or the right to seek the disqualification of any CPOST Commissioner who considered said documents and information.

10. Respondent acknowledges and agrees that this Consent Agreement and Order of Revocation is in conformance with Kansas and federal law and that CPOST has jurisdiction to enter into the this agreement and order the revocation of his certification. Respondent further agrees that the Kansas Law Enforcement Training Act is constitutional on its face and as applied in this case.

11. In the event a Kansas court of competent jurisdiction deems any provision of this Consent Agreement and Consent Order invalid or unenforceable, it shall be severed and the remaining provisions of this Consent Agreement and Order of Revocation shall be given full force and effect.

12. Upon execution by all parties and entry as an order by CPOST, this Consent Agreement and Order of Revocation shall be a public record in the custody of CPOST and subject to disclosure pursuant to the Kansas Open Records Act.

13. This Consent Agreement and Order of Revocation shall become effective on the day it is approved, accepted, and entered as an order by CPOST.

14. Respondent acknowledges and agrees that this Consent Agreement and Order of Revocation shall remain a part of his permanent certification record. Respondent further understands that, for purposes of reporting to the National Decertification Index, this matter shall be categorized as Adverse Action Classification: Order of Revocation.

15. Respondent does hereby fully, completely, and finally release CPOST and its agents, staff, or employees from any and all claims, charges, demands, damages, costs, expenses, actions and causes of action of every kind and whatsoever related to this Consent Agreement and Order

of Revocation. CPOST admits to no liability in any way related to this Consent Agreement and Order of Revocation.

16. Respondent acknowledges that he enters into this Consent Agreement and Order of Revocation freely and voluntarily after opportunity for consultation with counsel of his choosing. Respondent further acknowledges that he has read this Consent Agreement and Order of Revocation in its entirety, that he understands its legal consequences, and that he agrees that none of its provisions or terms are unconscionable, arbitrary, or capricious.

17. Respondent acknowledges and agrees that this Consent Agreement and Order of Revocation constitutes the entire and final agreement of the parties and may only be modified by a subsequent writing signed by both parties and approved by CPOST. The Consent Agreement and Order of Revocation shall be interpreted in accordance with the laws of the State of Kansas.

18. Based upon the above agreements, CPOST hereby accepts Respondent's surrender of his certification as a law enforcement officer and revokes his certification.

IT IS SO ORDERED.

KANSAS COMMISSION ON PEACE
OFFICERS' STANDARDS AND TRAINING

By: M Jarboe For
Sheriff James Jarboe, Commissioner and
Chair of Investigative Panel

AGREED AND APPROVED BY:

Richard Pacheco
RICHARD PACHECO, Respondent

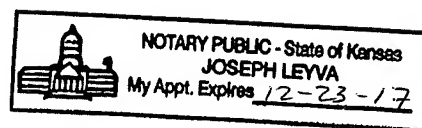
STATE OF KANSAS
COUNTY OF SEDGWICK


RICHARD PACHECO personally appeared before me a notary public, in and for the county and state aforesaid, who being duly sworn, did in my presence execute the foregoing Consent Agreement and Order of Revocation by affixing his signature thereto.

IN WITNESS THEREOF, I have affixed by seal and signature this 11 day of March,
2014.

Joseph Leyva
Notary Public

Seal




Eric N. Williams, #20078
Disciplinary Counsel
Kansas Commission on Peace Officers'
Standards and Training (KS-CPOST)
1999 N. Amidon, Suite 350
Wichita, KS 67203


CERTIFICATE OF SERVICE

This is to certify that on the 19th of March, 2014, a true and correct copy of the above and foregoing Consent Agreement and Order of Revocation was deposited in the U.S. mail, first-class postage prepaid, and addressed to:

Richard Pacheco

and

Original filed with KS-CPOST.


~~Kathy Green~~
~~Office Support Specialist~~
Vicki Mosk
Administrative Assistant